

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 ACTIONCOACH NORTH AMERICA, LLC,  
4 et al.,

5 Plaintiffs

6 v.

7 ALLISON DUNN,

8 Defendant

Case No.: 2:19-cv-02244-APG-DJA

**Order Granting in Part ActionCoach's  
Motion for a Preliminary Injunction**

[ECF No. 3]

9 Plaintiffs ActionCOACH North America, LLC and ActionCOACH OneCo, LLC  
10 (collectively, ActionCoach) move for a preliminary injunction to enforce a franchisee agreement  
11 with defendant Allison Dunn, including post-term non-compete and non-solicitation provisions.  
12 I reviewed the briefs and evidence submitted by the parties, and heard oral argument on March 4,  
13 2020. I deny the motion for a preliminary injunction to enforce the non-compete and non-  
14 solicitation provisions because ActionCoach has not made a sufficient showing of irreparable  
15 harm and a likelihood of success on the merits. But I grant its request that I order Dunn to  
16 (1) notify her clients that she is no longer an ActionCoach franchisee and (2) return or destroy  
17 ActionCoach's manuals, training materials, and confidential information.

18 A preliminary injunction is an "extraordinary" remedy and is "never awarded as of right."  
19 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). To obtain an injunction, the  
20 plaintiff "must establish that [it] is likely to succeed on the merits, that [it] is likely to suffer  
21 irreparable injury in the absence of preliminary relief, that the balance of equities tips in [its]  
22 favor, and that an injunction is in the public interest." *Id.* at 20. The Supreme Court of Nevada  
23 has held that a showing of irreparable harm is required to obtain a preliminary injunction to  
enforce a non-compete provision. *Excellence Community Management v. Gilmore*, 351 P.3d 720,

1 723-24 (Nev. 2015). I “must independently determine” that ActionCoach’s injury is in fact  
2 irreparable; a contractual provision stipulating that irreparable harm will result from a breach is  
3 insufficient to satisfy the irreparable harm requirement. *Int’l Ass’n of Plumbing & Mech.*  
4 *Officials v. Int’l Conference of Bldg. Officials*, 79 F.3d 1153, 1996 WL 117447 at \*2 n.3 (9th  
5 Cir. 1996) (table); *see also Michael A. Baron, M.D., Ltd. v. Gerson*, 238 P.3d 794, 2008 WL  
6 6043843 at \*1 (Nev. 2008) (table) (because movant for preliminary injunction to enforce non-  
7 compete agreement showed only minimal competition with respondent, contractual provision did  
8 not establish irreparable harm); *Bofi Fed. Bank v. Erhart*, No. 15-CV-02353-BAS(NLS), 2016  
9 WL 4680291 at \*8 (S.D. Cal. Sept. 7, 2016) (collecting cases). Additionally, a movant’s delay  
10 in requesting injunctive relief may rebut irreparable harm. *See Oakland Tribune, Inc. v.*  
11 *Chronicle Pub. Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985) (“Plaintiff’s long delay before seeking  
12 a preliminary injunction implies a lack of urgency and irreparable harm.”).

13       ActionCoach has not made a sufficient showing of irreparable harm in the absence of an  
14 injunction enforcing the non-compete and non-solicitation provisions because: (1) it has not  
15 shown that it can or will actually compete in the market Dunn agreed not to compete in or serve  
16 the clients Dunn agreed not to solicit; (2) it has not shown irreparable harm to its franchise  
17 system; (3) Dunn’s contractual stipulations do not satisfy the irreparable harm requirement; and  
18 (4) it waited an unreasonable amount of time before moving for a preliminary injunction.

19 ActionCoach also has not made a sufficient showing of a likelihood of success on the merits of  
20 its claims, especially as to whether “executive coaching” is prohibited under the non-compete  
21 provision. However, the *Winter* factors are satisfied with respect to ActionCoach’s request for  
22 an order requiring Dunn to (1) notify her clients that she is no longer an ActionCoach franchisee  
23 and (2) return or destroy ActionCoach’s manuals, training materials, and confidential

1 information. *See* ECF No. 1-2 at 22 (franchisee agreement). And at the hearing on the motion,  
2 Dunn agreed to such an order (primarily because she claims she already has done this).

3 I THEREFORE ORDER that ActionCOACH North America, LLC and ActionCOACH  
4 OneCo, LLC's motion for a preliminary injunction **[ECF No. 3] is GRANTED IN PART.**  
5 Defendant Allison Dunn is required to (1) notify her clients that she is no longer an ActionCoach  
6 franchisee and (2) return or destroy ActionCoach's manuals, training materials, and confidential  
7 information. By March 13, 2020 Dunn must submit to the plaintiffs an affidavit averring that she  
8 has done so.

9 DATED this 4th day of March, 2020.



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ANDREW P. GORDON  
UNITED STATES DISTRICT JUDGE